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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/637,161	08/08/2003	Herb M. Poplawski	36400.35US2	2925

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EXAMINER	
LEWIS, TISHA D	
ART UNIT	**PAPER NUMBER**
3681	

DATE MAILED: 01/27/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/637,161	POPLAWSKI ET AL.	
	Examiner	Art Unit	
	TISHA D. LEWIS	3681	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☐ Responsive to communication(s) filed on _____.

2a)☐ This action is **FINAL**. 2b)☒ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) *1-22* is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5)☒ Claim(s) *19-22* is/are allowed.

6)☒ Claim(s) *1-11 and 14-18* is/are rejected.

7)☒ Claim(s) *12 and 13* is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☒ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

DETAILED ACTION

The following is a response to the amendment filed on December 28, 2004 which has been entered.

Response to Amendment

Claims 1-22 are pending in the application.

-The final rejection filed on October 28, 2004 has been withdrawn due to applicant amending claims 1 and 9 over the prior art of record and applicant's argument pertaining to the disclosure supporting the limitation "vertical face".

Specification

The disclosure is objected to because of the following informalities:

-On page 16, line 18, before "joins", "the" should be changed to --this-- or --that--.

Appropriate correction is required.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

> A person shall be entitled to a patent unless –
>
> (b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

Claims 1 and 2 are rejected under 35 U.S.C. 102(b) as being unpatentable by Peter ('907). Peter discloses a vehicle having a vehicle frame (4) with two vertically oriented side frame members (71, Figure 2), a transmission housing (52) directly mounted to a vertical face of the member, a hydrostatic transmission (50) mounted in the housing with a pump (via 56) and a motor (via 57) connected through a hydraulic

circuit and an axle (via 6) driven by the motor and extending parallel to the frame member.

> (e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1 and 2 are rejected under 35 U.S.C. 102(e) as being unpatentable by Osuga et al ('886). Osuga et al discloses a vehicle having a vehicle frame (5) with two vertically oriented side frame members (5A, 5B), a transmission housing (6A) directly mounted to a vertical face of the member (column 3, lines 41-43), a hydrostatic transmission (7) mounted (integrated) in the housing with a pump (7P) and a motor (7M) connected through a hydraulic circuit and an axle (20) driven by the motor and extending parallel to the frame member.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

> (a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negatived by the manner in which the invention was made.

Claims is rejected under 35 U.S.C. 103(a) as being unpatentable over Peter in view of Boyer et al ('384) and over Osuga et al in view of Boyer et al. Peter and Osuga et al discloses a transmission housing secured to the frame member, but does not disclose how the two are secured.

Boyer et al discloses a vehicle including a vehicle frame (22) having at least one vertically oriented side frame member (24), a transmission housing (110) mounted to the frame member (via 48) by at least one bracket (38, 40), a hydrostatic transmission (104) mounted in the transmission housing comprising a motor and pump connected through a circuit [0054], and an axle shaft (44, 46) driven by the motor (via 48) and extending perpendicular to the frame member.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to secure the housing and frame member of Peter and Osuga et al with brackets in view of Boyer et al to provide an alternative means for securing the two members.

Claims 5, 7-11, 14-17 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peter in view of Hauser et al ('531) and over Osuga in view of Hauser et al. As to claim 5, Peter and Osuga et al discloses a transmission housing mounted to a frame member, but does not disclose a control arm engaged to the transmission.

Hauser et al discloses a vehicle having a transmission housing (21, 22) split vertically comprising a hydraulic motor and pump connected through a circuit, an axle shaft (90) driven by the motor and extending perpendicular to the vertical housing and a control arm (108) engaged to the housing (22) and mounted partially inside the housing (shaft of control arm) and partially outside the housing (lever of control arm) which would be between the housing and frame.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a control arm engaged to the

transmission in view of Hauser et al to limit rotational movement of the transmission output.

As to claim 7, Peter and Osuga et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface and a motor running surface.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a center section having a pump and motor running surface in view of Hauser et al to hydraulically connect the pump and motor for operation to the axles.

As to claim 8, Peter discloses a motor shaft driven (57) by the motor and parallel to the axle shaft.

As to claim 9, Peter and Osuga et al discloses the same limitations for claim 1 above, but does not disclose a control arm engaged to the control mechanism.

Hauser et al discloses a vehicle having a transmission housing (21, 22) split vertically comprising a hydraulic motor and pump connected through a circuit, an axle shaft (90) driven by the motor and extending perpendicular to the vertical housing and a control arm (108) engaged to the housing (22) and mounted partially inside the housing (shaft of control arm) and partially outside the housing (lever of control arm) which would be between the housing and frame.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a control arm engaged to the transmission in view of Hauser et al to limit rotational movement of the transmission output.

As to claim 10, Peter and Osuga et al discloses the control mechanism being in the form of a rotatable swash plate.

As to claim 11, Peter and Osuga et al discloses a motor mounted in the housing in fluid communication with the pump and the axle shaft mounted in and extending from the housing and driven by the motor.

As to claim 14, Peter and Osuga et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface and a motor running surface.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a center section having a pump and motor running surface in view of Hauser et al to hydraulically connect the pump and motor for operation to the axles.

As to claim 15, Peter and Osgua et al discloses a transmission having a hydraulic motor and pump, but does not disclose the structure of how the motor and pump are connected.

Hauser et al discloses a transmission having a center section (10) with porting, a pump running surface perpendicular to the vertical transmission housing (21, 22) and a motor running surface horizontal to the housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with a center section having a pump oriented vertically to the frame and a motor oriented horizontal to the frame in view of Hauser et al to reduce the height of the transmission in the vertical direction.

As to claim 16, Peter and Osuga et al discloses a motor shaft driven by the motor, a reduction gear (Figure 3 in Osuga and 15 in Peter) driven by the motor shaft, and a bull gear (90) driven by the reduction gear and linked to the axle shaft.

As to claim 17, Peter discloses the motor shaft being parallel to the axle shaft.

Claims 4 and 6 are rejected under 35 U.S.C. 103(a) as being unpatentable over Peter in view of Yoshina et al and over Osuga et al in view of Yoshina et al ('316). Peter and Osuga et al discloses a transmission housing secured to a frame member, but the housing does not disclose a boss.

Yoshina et al discloses a snow thrower auger (46) driven by an engine (E), a hydraulic motor (M) driven by the engine and a transmission housing (1, 2) secured to a frame (27) by brackets (27a) which are secured to bosses (2a) formed with the transmission housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al with bosses formed with the

transmission housing in view of Yoshina et al to eliminate additional (separate) components used to secure the housing to the frame member.

Claim 18 is rejected under 35 U.S.C. 103(a) as being unpatentable over Peter and Osuga et al in view of Hauser et al as applied to claim 9 above, and further in view of Yoshina et al. Peter and Osuga et al in view of Hauser discloses a transmission housing secured to a frame member, but the housing does not disclose a boss.

Yoshina et al discloses a snow thrower auger (46) driven by an engine (E), a hydraulic motor (M) driven by the engine and a transmission housing (1, 2) secured to a frame (27) by brackets (27a) which are secured to bosses (2a) formed with the transmission housing.

It would have been obvious to a person of ordinary skill in the art at the time the invention was made to provide Peter and Osuga et al in view of Hauser et al with bosses formed with the transmission housing in view of Yoshina et al to eliminate additional (separate) components used to secure the housing to the frame member.

Allowable Subject Matter

Claims 12 and 13 are objected to as being dependent upon a rejected base claim, but would be allowable if rewritten in independent form including all of the limitations of the base claim and any intervening claims.

Claims 19-22 are allowed.

FACSIMILE TRANSMISSION

Submission of your response by facsimile transmission is encouraged. Group 3600's facsimile number is **(703) 872-9326 before final and 703-872-9327 after final**. Recognizing the fact that reducing cycle time in the processing and examination of patent applications will effectively increase a patent's term, it is to your benefit to submit

responses by facsimile transmission whenever permissible. Such submission will place the response directly in our examining group's hands and will eliminate Post Office processing and delivery time as well as the PTO's mail room processing and delivery time. For a complete list of correspondence **not** permitted by facsimile transmission, see MPEP 502.01. In general, most responses and/or amendments not requiring a fee, as well as those requiring a fee but charging such fee to a deposit account, can be submitted by facsimile transmission. Responses requiring a fee which applicant is paying by check **should not be** submitting by facsimile transmission separately from the check.

Responses submitted by facsimile transmission should include a Certificate of Transmission (MPEP 512). The following is an example of the format the certification might take:

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>
> Typed or printed name of person signing this certificate:
>
> _____
>
> _____ (Signature)

If your response is submitted by facsimile transmission, you are hereby reminded that the original should be retained as evidence of authenticity (37 CFR 1.4 and MPEP 502.02). Please do not separately mail the original or another copy unless required by the Patent and Trademark Office. Submission of the original response or a follow-up copy of the response after your response has been transmitted by facsimile will only cause further unnecessary delays in the processing of your application; duplicate responses where fees are charged to a deposit account may result in those fees being charged twice.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to TISHA D. LEWIS whose telephone number is 703-305-0921. The examiner can normally be reached on M-Thur 8 AM TO 3 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, CHARLES A. MARMOR can be reached on 703-308-0830. The fax phone

number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see http://pair-direct.uspto.gov. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Tdl
January 24, 2005

THOMAS LEWIS
PRIMARY EXAMINER
1/24/05 Art 3681